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## Were Strykers fast-tracked?

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In June 2002, two years before a military environmental study wrapped up, an Army Stryker brigade was on track for Hawai'i, court papers show.

At a meeting in Virginia of Army personnel, Col. Rick Hoefert, with the director of Environmental Programs office, told the group that planning for the then-five Stryker brigades around the country was among the Army secretary's top priorities, records state. But problems surfaced with a call to provide National Environmental Policy Act, or NEPA, documentation to support the proposal.

"Col. Hoefert recognized that Hawai'i especially has unique challenges," meeting notes state. According to the notes, Hoefert also noted that a programwide environmental impact statement for the five proposed Stryker brigades "was not able to address all of our needs, and now we are running into some problems."

But Army "transformation" to the Strykers was on a tight timeline, and Hoefert reiterated that "NEPA and the environment cannot become the show-stopper."

Four years later, those problems caught up with the Army in the 9th U.S. Circuit Court of Appeals, which ruled 2-1 last month that the Army violated national environmental law by not considering alternate locations outside Hawai'i for the unit that has 328 armored vehicles and 3,900 soldiers.

The court ordered the Army to examine alternative locations, a process that could take up to two years.

Where the case goes next is unclear. The decision, however, will have far-reaching ramifications for the \$1.5 billion unit, which represents one of the biggest Army projects in Hawai'i since World War II.

"We are committed to ensuring that the Army does an objective analysis about whether this should be put somewhere else," said David Henkin, an Earthjustice attorney who has represented three Hawaiian groups in the lawsuit that led to the recent injunction.

"Between the sensitivity of Hawai'i's environment and the exorbitant cost of putting a Stryker brigade here when they already have training facilities built in other locations, and to spend another half-billion dollars of taxpayer money to build it here when we are in a period of budget deficit, seems to me irresponsible."

The Oct. 5 decision overturned a previous ruling in the Army's favor in Honolulu federal District Court. It also had a dissenting opinion from appeals court Judge Carlos T. Bea, who found that the Army had met NEPA requirements.

An Oct. 27 temporary injunction has idled Schofield Barracks' Stryker brigade training and construction projects as the unit's soldiers prepare for a fall 2007 deployment to Iraq. The Army was in the midst of 28 Stryker-related projects worth \$700 million when the injunction was put in place, stopping all work.

Henkin said the Army has to complete the supplemental assessment looking at other locations for the brigade before training here with the vehicles conceivably could continue.

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## EXHIBIT 34

## ARMY WEIGHS APPEALS

The Army said it is weighing its options. It can seek a rehearing either from the three-member panel or a 15-judge appeals court panel and has 45 days from the Oct. 5 decision to do so. The Army also has 90 days to decide if it wants to seek review before the U.S. Supreme Court, he said.

William Aila Jr., a Wai'anae Coast resident and plaintiff to the lawsuit originally filed in 2004, speculated that the Army may choose another route.

"I would look for a rider (to federal legislation) that would exempt Strykers in Hawai'i, or Strykers in the (Army's) transformation, from NEPA," Aila said.

U.S. Sen. Daniel Akaka and U.S. Sen. Daniel K. Inouye, who championed the Stryker brigade, obtained approval in 1986 of an extraordinary environmental exemption for the H-3 highway. The H-3 project was one of the first in the state to require an environmental impact statement under NEPA.

In 1979, the Tennessee Valley Authority's Tellico Dam received an environmental exemption from Congress in the dam's conflict with the endangered snail darter.

In the short term, the Army may have to move its Stryker brigade eight-wheeled vehicles and soldiers to a post such as Fort Lewis in Washington to train for its 2007 deployment to Iraq.

A military spouse at Schofield Barracks said her husband's unit was told the soldiers might have to go to Fort Lewis for training, but families would remain back in Hawai'i.

Stretch Rodney, a spokesman for U.S. Army Pacific at Fort Shafter, confirmed the brigade will head to the National Training Center in California for much of September and October for certification and mission rehearsal exercises. That plan was in place prior to the latest court decisions, but the soldiers are now going earlier than expected, he said.

"They can go there early, do some of the gunnery (exercises), and then do ... their mission rehearsal exercise and execute that in October," Rodney said.

Army lawyers on Friday said "it is both the position of the local U.S. attorney and the Department of Justice not to comment on this matter (of Stryker litigation) as it is in active litigation."

## FAULTS IN REPORT

The Army's problems in the appeals court centered on its preparation of a programmatic environmental impact statement after it declared its intent in 2000 to conduct the Stryker conversion.

At the time, five brigades were discussed in the assessment. Seven are now planned by the Army. The PEIS, issued in 2002, indicated the Army planned to transform existing units "in place," rather than relocate them. Only two strategies were considered: taking no action and full implementation.

But the majority decision of the appeals court says the Army's own experts recognized the shortcomings of the assessment. In June 2002, those experts pointed out that it "does not contain specific language about why each of the five sites was selected."

A site-specific assessment for Hawai'i was conducted. It was, however, based on the previous declaration that one of the Stryker brigades was to be located in Hawai'i, and considered only: creating a Stryker unit here, creating the unit with less land acquisition, or no action.

Under a heading of "Where the Army went wrong," the appeals court majority opinion said under NEPA, a federal agency "must look at every reasonable alternative within the range dictated by the nature and scope of the proposal."

The court said the Army should have looked outside the state in either the programmatic or the site-specific assessment but